In the High Court of Judicature for Rajasthan
Jaipur Bench
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1- Company Appeal No.12/2007
M/s Sunshine Buildhome (P) Ltd & (5)Others
Versus Madhusudan Garg & (4) Ors.
2- Company Appeal No.13/2007
M/s Sunshine Buildhome (P) Ltd & (5)Others
Versus Madhusudan Garg & (4) Ors.

Date of Order ::: 20/11/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. M.D.Agrawal, for appellants
Mr. Anant Kasliwal, for respondents

At joint request, both these appeals arising out of common disputes have been finally heard and disposed of at admission stage by this order.

These appeals U/s 10-F of Companies Act, 1956 ("**Co. Act**") are directed against inter-locutory orders dt.24/08/07 & dt.13/09/07 in Co.Pet.39/2007. Section 10-F of Co. Act expressly provides that an appeal would lie to the High Court against decision or order of Company Law Board ("**the Board**") on any question of law arising out of such order.

Respondents herein filed company petition before the Board raising grievance about prevention of oppression and mismanagement of the company's affairs by invoking Sections 397 & 398 of the Co. Act. Pendente company petition, Company Application Nos.201/07 & 202/07 were filed by respondents herein,

on which after hearing both the parties, the Board passed an order dt.24/08/07 ad infra:

> "The pleadings have not been completed as yet as directed by the CLB's earlier orders. The petitioner received the reply to the CP on 21st August only. Two weeks time is allowed to file rejoinder. Reply to CA No.201 was also filed by the respondents on 21st August, 2007. Petitioner is allowed to file rejoinder to the reply to the CA. Petitioner filed reply to the respondents' CA No.202 on 17/05/2007. Respondents do not wish to file rejoinder. Heard the parties on opening of Bank A/c with Yes Bank. Operations out of this A/C are stopped till further orders. Adjourned to 13/09/2007 at 2.30 P.M. For arguments on C.P. And CAs."

Further Company application No.383/07 was also filed and after hearing both the parties, the Board passed an order dt.13/09/07 ad infra:

> "CA No.383/07 mentioned respondents seek three days time to file reply to the CA. Allowed. Meanwhile the respondents are restrained from opening any other Bank A/c in respect of the respondent Company. To let the operations of the business of the Company continue R-1 & P-1 are hereby directed to operate the Bank A/C other than the Yes Bank A/c with their joint signatures only till the disposal of CA No.39/2007. Adjourned to 5/11/2007 at 10.30 AM."

it is relevant to mention here that pleadings of company petition No.39/2007, as informed to this Court, are complete and it has ripen for final hearing fixed on 05/11/07. Since the hearing could not have been completed, matter has been adjourned till January, 2008 before the Board.

Appellants herein are arrayed as respondents in Company petition before the Board and assailed inter locutory orders dt.13/09/07 & dt.24/08/07 and strenuously raised two questions of law in course of arguments, ad infra:

> "(i) Whether the Company law Board has jurisdiction to pass any interim order without any relief sought with regard to the same in main petition, filed before it ?
>
> (ii) Whether a person, who has already been removed from Directorship of Company, can be allowed to sign on the cheque on behalf of the Company ?"

While passing interlocutory order dt.24/08/07, the Board, after hearing the parties, considered it proper not to permit the parties to operate "Yes Bank" accounts till further orders; and it appears that on account of the operation of "Yes Bank" being stayed, it was causing great hardship; as such taking into consideration material on record, the Board passed further interim order dt.13/09/07 that let the

parties may operate Bank account other than “Yes Bank” but with their joint signatures till disposal of Co.Pet.39/07. Company petition (supra) has basically been filed for oopression & mismanagement of Company's affairs and these interlocutory orders relate only in regard to management and for better functioning of company's affairs. The Board in the contextual facts have exercised discretion and user of discretion cannot by any stretch be terms to be so perverse in any event, so as to warrant interference or intervention by this Court as provided in terms of the statute. That apart, from the reply filed by appellants herein before the Board to the company applications, it appears that no such objection was raised about its jurisdiction. In the opinion of this Court, none of questions raised at the bar can be said to be questions of law having arisen out of interlocutory orders impugned so as to entertain instant appeals in terms of Section 10-F of the Co. Act.

Consequently, both the appeals fails and are hereby dismissed. No costs.

(Ajay Rastogi), J.